Chariot Marine Fabricators & Industrial Corp. and Mariah Boats, Inc., Single Employer and/or Alter Egos *and* Southern Illinois Laborers District Council affiliated with Laborers' International Union of North America, AFL–CIO

Mariah Boats, Inc. *and* Steve Danner *and* Southern Illinois Laborers District Council affiliated with Laborers' International Union of North America, AFL–CIO. Cases 14–CA–24551, 14–CA–24728–4, and 14–CA–24965

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

On April 23, 1999, Administrative Law Judge C. Richard Miserendino issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Council filed cross-exceptions and a supporting brief. Thereafter, the Respondent and the General Counsel each filed answering briefs and reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt his recommended Order as modifed.[3]

[1] The Respondent filed a motion to strike certain of the General Counsel's cross-exceptions on the ground that they fail to comply with Sec. 102.46(b) of the Board's Rules and Regulations in that they do not identify the part of the judge's decision to which objection is made and do not designate page citations to the record. We find that the General Counsel's cross-exceptions sufficiently identify the portions of the judge's decision the General Counsel claims are erroneous. See, e.g., *Fiber Industries*, 267 NLRB 840 fn. 2 (1984); *Giddings & Lewis, Inc.,* 240 NLRB 441 fn. 2 (1979). Accordingly, we deny the Respondent's motion to strike the cross-exceptions.

The General Counsel moved to strike the declaration of one of the Respondent's attorneys and a proposed settlement agreement, documents which the Respondent submitted to the Board as attachments to its exceptions. We find merit in the General Counsel's motion and strike these documents. As to the declaration, which contains the attorney's recollections of pretrial telephone conversations between the parties and the judge and between the attorney and the investigating Board agent, the Respondent failed to introduce this document into evidence at the hearing and thus it never became a part of the record. See *Lear Siegler, Inc*., 295 NLRB 857, 862 fn. 34 (1989). As to the settlement agreement, which the Region proposed to the parties prior to the issuance of the complaint in this case, it is well-settled that offers of settlement are generally not admissible. See Fed.R.Evid. 408. Moreover, the settlement agreement was never offered into evidence and never became part of the record.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that Chariot Marine and Mariah Boats are not alter egos. We decline to pass on this issue as it is immaterial to the resolution of this case.

The judge dismissed the complaint allegation that the Respondent violated Sec. 8(a)(1) by photographing Chariot employees at the April 30, 1997 union meeting held at the Chariot facility. No exceptions were filed to the judge's dismissal of this allegation.

In adopting the judge's finding that the credible evidence supports a reasonable inference that the Respondent's closing of its Chariot Marine facility was motivated by contemporaneous union activity at its Mariah facility, we note that IBEW Local 702 handbilled at the Mariah facility at the end of April 1997, not on April 18, 1997, as stated by the judge.

The Respondent contends that about April 26, 1997, Jimmy Fulks, a co-owner of Chariot Marine as well as an owner of Mariah Boats, and Paul Schoen, a co-owner of Chariot Marine as well as a corporate director of Mariah Boats and its corporate counsel and agent, decided to close the Chariot facility on May 2, 1997. The Respondent contends that the judge erred in discrediting their testimony to this effect and asserts that the judge's discrediting of their testimony rests on a misattribution of certain testimony and a mischaracterization of that testimony. We find merit in this exception to the following extent. We agree with the Respondent that at sec. III,B,2,b,3 of his decision, the judge erred by attributing certain portions of Schoen's testimony to Fulks and by mischaracterizing that testimony. Thus, it was Schoen, not Fulks, who testified that he and Fulks decided that they would close the Chariot facility on May 2 soon after Schoen learned that "the [Chariot] building price was 1.35 million dollars and that was roughly April 18th to 21st, somewhere in that range." (Tr. 799, 1321.) The judge further erred by mischaracterizing this testimony of Schoen at fn. 40 of his decision, where the judge stated that "Fulks" testified to the effect "that the decision to close Chariot on May 2 was actually made on or about April 18." As Schoen's testimony makes clear, however, April 18 was the date that Schoen learned the asking price for the Chariot facility, not the date that Fulks and Schoen allegedly decided to close the facility. We note further that Fulks' testimony that the decision to close the Chariot facility on May 2 was made on April 26 or 27 (Tr. 844) is consistent with Schoen's testimony to the effect that the decision to close was made on April 26 (Tr. 1327).

However, merely because Fulks' and Schoen's testimony is consistent on this issue does not establish that the Respondent did, in fact, decide to close the Chariot facility on May 2. Indeed, other evidence relied on by the judge in finding that the Respondent never decided to close the facility on May 2 argues against it. In this regard, as explained by the judge, although Schoen wrote to the Board agent on April 26, 1997, his letter did not mention the fact that, as the Respondent asserts, a decision had been made to close the Chariot facility on May 2. Further, the Respondent did not introduce into evidence any plans for closure of the Chariot facility or any other evidence which would support its contention that a decision had been made to close the Chariot facility on May 2. Finally, as explained by the judge, Fulks testified that but for the union meeting which occurred on April 30, there were no plans to close the Chariot facility on that date (April 30). The abrupt decision to close the Chariot facility on April 30, a decision which the judge found was motivated by antiunion animus, argues against a finding that the Respondent had already decided to close the facility on May 2 for lawful reasons. Given these circumstances, we find that the mere fact that Fulks and Schoen testified that they decided on April 26 to close the Chariot facility on May 2 does not establish as fact that such a decision was made on that date. Rather, we find, in agreement with the judge, that the evidence does not support a finding that the Respondent ever decided to close the Chariot facility on May 2.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chariot Marine Fabricators & Industrial Corp., West Frankfort, Illinois, and Mariah Boats, Inc., Benton, Illinois, a Single Employer, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Within 14 days from the date of this Order, offer reinstatement at its existing Mariah facility in Benton, Illinois, to all former Chariot production and maintenance employees and truckdrivers, including but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and discharging if necessary any employees, not former employees of Chariot, hired after April 30, 1997; and in the event of the unavailability of jobs sufficient to permit the immediate reinstatement of all such employees, the Respondent shall place such employees on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions at the Mariah facility."

2. Insert the following as new paragraph 2(c) and reletter the following paragraphs.

"(c) Within 14 days from the date of this Order, expunge from its files any reference to the April 30, 1997 discharges of all former Chariot production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, and within 3 days thereafter notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them."

3. Substitute the following for paragraph 2(g).

"(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT unlawfully create the impression of surveillance by taking notes of employees engaged in union activities.

WE WILL NOT tell employees attending a union meeting that we are closing the Chariot plant because they are engaged in union activity.

WE WILL NOT promulgate, disseminate, and maintain an employee handbook that contains a provision that implicitly threatens retaliatory conduct if you seek union representation.

WE WILL NOT promulgate, disseminate, and maintain an employee handbook that contains a provision that discourages, restrains or interferes with your right to organize, join, and/or support a union or to discuss the

[3] In analogous cases involving unlawful discharges, the Board has included as part of its make-whole remedy the requirement that, in fulfilling its obligation to reinstate the unlawfully discharged employees, the respondent discharge, if necessary, any employees hired after the date of the unfair labor practice discharges. See, e.g., *Cub Ranch Mining*, 300 NLRB 57 (1990), and *American Signature, Inc*., 334 NLRB 880 (2001). We amend the judge's recommended remedy to include such a requirement here, and we shall modify the judge's recommended Order accordingly.

The judge inadvertently failed to include an expungement provision in his recommended Order. We shall modify the judge's Order to include such a provision. We shall also modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co*., 335 NLRB 142 (2001).

The judge included a narrow cease-and desist provision in his recommended Order. We agree with the judge that a narrow cease-and-desist provision is appropriate in this case. See, e.g., *Sterling Sugars, Inc.,* 261 NLRB 472 fn. 2 (1982). Since the notice included in the judge's decision inadvertently includes a broad cease-and-desist provision, we shall substitute the attached notice, which includes a narrow cease-and-desist provision, for that of the administrative law judge.

ganize, join, and/or support a union or to discuss the same during nonworking hours.

WE WILL NOT close our Chariot facility in West Franklin, Illinois, in order to discourage membership in, sympathy for, and activities on behalf of Southern Illinois Laborers District Council, affiliated with Laborers' International Union of North America, AFL–CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer reinstatement at our existing Mariah facility, in Benton, Illinois, to all former Chariot production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and discharging if necessary any employees, not former employees of Chariot, hired after April 30, 1997; and in the event of the unavailability of jobs sufficient to permit the immediate reinstatement of all such employees, WE WILL place such employees on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions at the Mariah facility.

WE WILL make whole all the former Chariot production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, for any loss of earnings and other benefits suffered by them as a result of their unlawful terminations, from April 30, 1997, to the date of reinstatement with Mariah Boats, Inc., less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any reference to the April 30, 1997 discharges of all former Chariot production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

CHARIOT MARINE FABRICATORS & INDUSTRIAL CORP. AND MARIAH BOATS, INC., A SINGLE EMPLOYER

Kathy J. Talbot-Schehl, Esq., for the General Counsel.
Timothy J. Sarsfield, Esq. and *Stephen D. Smith, Esq*., of St. Louis, Missouri, for the Respondent.
Michael O'Hara, Esq., of Springfield, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Benton, Illinois, on May 4–8 and June 1–3, 1998. The charge in Case 14–CA–24551 was filed by the Union on May 2, 1997, and was amended on June 30, 1997.[1] The charge in Case 14–CA–24728–4 was filed by an individual Charging Party, Steven D. Danner, on August 18, and was amended on November 24. The charge in Case 14–CA–24965 was filed by the Southern Illinois Laborers District Council, affiliated with Laborers' International Union of North America, AFL–CIO (Union) on February 2, 1998.

A second consolidated amended complaint was issued on February 26, 1998, alleging that (1) from about April 30 through June 19, 1997, Chariot Marine Fabricators & Industrial Corp. (Chariot or Chariot Marine) and Mariah Boats, Inc. (Mariah) were a single employer and/or alter egos; (2) on April 30, Chariot's agents and/or supervisors, Paul Schoen and Harley Greeno, engaged in unlawful surveillance of a union meeting; (3) on April 30, Chariot's co-owner, Jimmy Fulks, unlawfully told its employees that he was closing the facility and terminating all employees because of their union activities; (4) on April 30, Chariot unlawfully terminated all its employees and closed its facility located in West Frankfort, Illinois, because some of its employees sought to organize a union and/or in an effort to "chill" unionism at Mariah's facility; (5) both Chariot and Mariah maintained identical personnel policy manuals containing provisions which unlawfully interfered with, restrained, and coerced employees in the exercise of their Section 7 rights under the Act; (6) on May 5, and other various dates thereafter, Mariah unlawfully refused to hire or consider for hire 13 former Chariot employees, because of their alleged union activities while with Chariot; and (7) between May 1 and 10, Mariah's agents and/or supervisors, April Burress and John Vincini, unlawfully interrogated an employee, Mary Nalley, regarding her support for an "anti-union advertisement."

Respondent's timely answer denied the material allegations of the second consolidated amended complaint. The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and file briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed

[1] All dates are in 1997, unless otherwise indicated.

by the General Counsel, the Respondents Chariot and Mariah, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Chariot, a corporation that manufactured and sold custom-made boat trailers and marine industry products, had its principal offices and manufacturing facility in West Frankfort, Illinois, through April 30, 1997. During the 12-month period preceding April 30, 1997, it purchased and received at its West Frankfort, Illinois facility goods valued in excess of $50,000, directly from points located outside the State of Illinois. Chariot admits and I find that at all material times it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Mariah, a corporation that manufactures and sells fiberglass boats, has its principal office and manufacturing facility located in Benton, Illinois, and, at least through June 19, 1997, had a secondary manufacturing facility located at West Frankfort, Illinois. During the calendar year 1997, Mariah purchased and received at its Benton, Illinois facility goods valued in excess of $50,000, directly from points located outside the State of Illinois. Mariah admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Finally, Chariot and Mariah admit and I find that, at all relevant times, the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. 10(b) ISSUES

During the hearing, and in their brief, the Respondent's counsel sought to dismiss allegations of the complaint contained in paragraphs 5C–E on the grounds that the allegations are time-barred under Section 10(b) of the Act. I reserved ruling on the motion at the hearing. For the reasons stated below, I now grant the Respondent's motion to dismiss these allegations of the second consolidated amended complaint.

Paragraphs 5C–E of the complaint allege that between May 2 and 10,[2] the Respondent, through its supervisors and agents, April Burress and John Vincini, interrogated employee Mary Nalley about whether she would support an antiunion advertisement by signing the ad. The threshold issue is whether the allegations of those paragraphs are time-barred under Section 10(b) of the Act and therefore should be dismissed.

The evidence shows that the original relevant underlying charge in Case 14–CA–24728, which was filed by individual Charging Party Steven Danner against Respondent Mariah on August 18, 1997, alleges that Mariah unlawfully refused to hire him on May 5, 1997, in violation of Section 8(a)(3) of the Act. On November 24, 1997, Danner's original charge was amended to allege, among other things, that Mariah "since about May 1, 1997 and continuing on two other occasions but not later than May 10, 1997, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, as amended, by acts and conduct including interrogating employees" in violation of Section 8(a)(1) of the Act.

The Respondent argues that because the amended charge was not filed within 6 months of May 10, 1997,[3] it is time-barred and the allegations should be dismissed from the complaint. The Respondent further argues that, under the criteria established by the Board in *Redd-I, Inc*., 290 NLRB 1115 (1988), the interrogation allegations should not be deemed to relate back to the original charge, which did not contain any alleged violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel does not dispute that the relevant amended charge was not filed within 6 months of May 10, 1997. Rather, counsel for the General Counsel argues that the allegations in the relevant amended charge are "closely related" to the 8(a)(1) allegations in another charge filed by another party (i.e., the charge filed in Case 14–CA–24551 by the Union) and therefore should not be dismissed.[4]

The evidence shows that the original charge in Case 14–CA–24551, which was filed by the Union against Respondent Chariot on April 30, 1997, alleging that Chariot unlawfully terminated its employees in violation of Section 8(a)(3) of the Act. That charge was amended on June 30, 1997, to further allege that Chariot and Mariah were a single employer/alter ego and that the unlawful termination of employees on April 30 was intended to chill unionism at the Mariah facility in Benton. The amended charge in Case 14–CA–24551 also alleges that Chariot/Mariah interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, (1) by maintaining identical personnel policies prohibiting nonwork-related conversation during working hours and by impliedly threatening to reduce pay and benefits if the employees chose union representation; (2) by engaging in surveillance and notetaking at Chariot; and (3) by informing employees at Chariot that the plant would close and they would be terminated for engaging in union activities in violation of Section 8(a)(1) of the Act.

In *Redd-I, Inc.,* 290 NLRB 1115 (1988), the Board identified certain factors for determining whether allegations arising from a charge, which is otherwise untimely, can be added to a complaint based on their close relationship to the allegations in a timely filed charge. Under the "closely related" test, it must be determined whether the otherwise untimely allegations in the complaint (1) involve the same legal theory as the timely allegations in the charge; (2) arise from the same factual circumstances; and (3) entail the same or similar defenses by the Respondent. In assessing each of these factors, I find that the untimely allegations in the Danner amended charge in Case 14–CA–24782–4 are not closely related to either the timely allegations in his original charge or the timely 8(a)(1) allegations in the Union's charges in Case 14–CA–24551.

[2] The evidence shows that the relevant time period actually extends from May 2 through 16.

[3] The Respondent asserts that even if the relevant timeframe was extended to May 16, 1997, consistent with a fair reading of the second consolidated amended complaint, the allegations are still time-barred.

[4] Notably, counsel for the General Counsel does not assert that the untimely allegations of Danner's amended charge relate back to his original charge.

First, Danner's original and amended charges invoke different sections of the Act and are predicated on different legal theories. The 8(a)(3) discrimination allegation arose in the context of Mariah refusing to hire a former Chariot employee. The legal theory was that he was not hired because of his union support. The 8(a)(1) allegations arose in the context of asking a current Mariah employee, if she was going to sign a newspaper advertisement supporting Mariah's president and denouncing the Union. The legal theory was the Mariah supervisor's conduct was coercive.

Further, the factual circumstances surrounding Danner's original and amended charges are not the same. The alleged interrogation in Danner's amended charge does not even involve Danner, or anyone else seeking employment with Mariah. Rather, it involves the alleged interrogation of Mariah's employee Nalley and is coincident to the spontaneous response of Mariah management and employees to comments made by Mayhew about Fulks. Finally, the evidence shows that the legal defenses to Danner's charges are not the same.

As noted above, counsel for the General Counsel fails to acknowledge that the untimely allegations in Danner's amended charge against Mariah are not closely related to the timely allegations in his original charge. Instead, she asserts that the untimely allegations of the Danner amended charge is closely related to a different timely charge filed by the Union in Case 14–CA–24551. Counsel for the General Counsel does not cite any supporting authority, and I am unconvinced from a plain reading of *Redd-I, Inc.,* that the General Counsel can bootstrap a closely related argument relying solely on a charge filed by another party in a case consolidated for trial. Even if that were proper, I find that counsel for the General Counsel has not satisfied the closely related test.

First, the two charges do not involve the same legal theory. Danner's amended charge, alleges the unlawful interrogation of a Mariah employee. The Union's amended charge alleges that Chariot/Mariah, as a single employer, with respect to the Section 8(a)(1) violations, unlawfully interfered with the Section 7 rights of Chariot employees by maintaining unlawful provisions in its employee handbook, by unlawfully threatening Chariot employees with plant closure, and by unlawfully surveilling employees engaged in union activities. Aside from the fact that they both allege an 8(a)(1) violation, counsel for the General Counsel has not adequately established that Danner's charges and the Union's charges allege the same unlawful objective. While it may be argued that both involve or are "part of an overall plan to resist organization," the argument fails in the absence of a concomitant single employer/alter ego allegation in Danner's original and/or amended charge. Likewise, the alleged interrogation of Mariah employees in Danner's amended charge does not involve or arise out of the interference with the Section 7 rights of Chariot employees in the Union's charges. Finally, counsel for the General Counsel concedes, and the record shows, that the defenses raised by the Respondent to Danner's amended charge and the Union's timely charges are different. Accordingly, the Respondent's motion to dismiss the allegations of paragraphs 5C–E of the second amended complaint is granted.[5]

In addition, the Respondent argues at page 9, footnote 7, of its posthearing brief that the alleged unlawful refusal to hire Brent Houseworth on May 11, 1997, contained in Danner's amended charge is also time-barred. I disagree. Applying the "closely related" test, I find that the same legal theories that apply to Danner in the original charge, also apply to Houseworth in the amended charge (i.e., unlawful refusal to hire); that Houseworth's alleged refusal to hire arises out of the same sequence of events as Danner's refusal to hire; and to an extent, the Respondent relies on the same defenses (i.e., that the Respondent had legitimate nondiscriminatory reasons for not hiring Houseworth). Accordingly, I deny the motion to dismiss the allegations in paragraph 7B of the second consolidated amended complaint that the Respondent unlawfully refused to hire Brent Houseworth on or about May 11, 1997.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. The Respondent corporations

In 1989, Mariah began manufacturing luxury pleasure boats, which are sold to boat dealers throughout the United States. Its principal shareholder is, and always has been, Jimmy Joe Fulks, who owns 89 percent of Mariah's stock. Jimmy Fulks is president and treasurer of Mariah. He and Paul Schoen, Mariah's corporate counsel and registered agent, are corporate directors, along with Fulks' wife, his son, Rance, and Mariah's chief financial officer, Guy W. Coons.

In 1994, Fulks and Paul Schoen founded Chariot Marine and began manufacturing custom-made boat trailers for Mariah boats. From the outset, almost all of Chariot's trailers were sold directly to Mariah or to retail boat dealers, who sold Mariah boats.[6] In 1995, Chariot started manufacturing stainless steel parts and aluminum fuel tanks exclusively for Mariah boats. About the same time, Mariah subleased space from Chariot in West Frankfort, Illinois, and began manufacturing fiberglass forms at the West Frankfort facility.

Jimmy Joe Fulks and Paul Schoen each owned 50 percent of Chariot's stock and were corporate directors of the Company. Their wives, Geraldine Fulks and Bobbi S. Schoen, were the other corporate directors. Schoen served as the president of Chariot and its registered agent. Fulks was Chariot's treasurer. Bobbi Schoen, wife of Paul Schoen, was Chariot's corporate secretary until July 1997, when she was replaced by Rance Fulks, son of Jimmy Fulks. Zella Furlong, Jimmy Fulks' personal secretary at Mariah, was the corporate assistant secretary for Chariot, as well as the corporate assistant secretary at Mariah.

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[5] In light of the above finding, it is unnecessary for me to decide the corollary issues of whether April Burress is a supervisor within the meaning of Sec. 2(11) of the Act or an agent within the meaning of Sec. 2(13) of the Act and, if so, whether Nalley was unlawfully interrogated in violation of Sec. 8(a)(1) of the Act.

[6] Although Chariot also made two other types of trailers for Yar-Craft, another boat manufacturer, the vast majority of its business was done with Mariah or dealers, who carried Mariah boats.

2. Organizing activity at Mariah and in the Benton-West Frankfort area

Benton and West Frankfort, Illinois, are approximately 6 miles apart. The boating industry is the largest employer in the Benton-West Frankfort area. In addition to Mariah, two other boat manufacturers are located in the immediate area, Crown Line Boats and Bombardia Boats. Thus, in a relatively small geographic area, there is a relatively large number of boating industry employers and employees.

In late 1989, the Union sought to organize Mariah not long after the Company began operating. Union organizer Randy Mayhew handbilled at Mariah's facility, which initially was located in Pittsburgh, Illinois.[7] In the course of the organizing activity, Mariah moved to its present location in Benton, and the Union followed. Ultimately the Board conducted an election in February 1990, which the Union lost. For the next 7 years, the Union made no attempt to organize any boating industry employees in the Benton-West Frankfort area.

In early 1997, the International Union of Operating Engineers, Local 399 (Local 399 or IUOE) assessed the possibility of organizing the employees of Mariah and Crown Line in Benton.[8] Local 399 organizers Rodney Hale and Tom Reidelberger testified that they toured both facilities ostensibly as potential customers. More specifically, they testified that at Mariah, Regional Sales Manager Kenneth Crews, gave them a tour during which Hale told Crews he was a union organizer. Crews denied that he ever gave Hale and Reidelberger a tour and testified that he would have remembered meeting a union representative because he has several family members who belong to Local 318, IUOE. For demeanor reasons, I credit the testimony of Hale and Reidelberger. Even if they had not taken a tour of the Mariah facility or met Crews, the unrebutted credible evidence shows that the union did target Mariah for organizing activity in March–April 1997. Indeed, the evidence shows that Hale and Reidelberger patronized local restaurants and taverns talking to local residents about unionizing the boat manufacturers in the area, and that they subsequently decided to organize Mariah.

On March 31, the IUOE hosted a dinner for its downstate Illinois members in Mt. Vernon, Illinois, which is approximately 25 miles north of Benton. Mary Nalley, a Mariah employee, was a guest. Hale and Reidelberger explained to her that Local 399 was considering Mariah as a potential organizing target and solicited her help. Nalley signed a union authorization card for Local 399. Over the next few weeks, Local 399 solicited a few more authorization cards from Mariah employees and scheduled an information meeting at a local hotel for the early part of May.

In the meantime, on April 18, Local 702, International Brotherhood of Electrical Workers (Local 702 or IBEW) placed handbills on the cars of Crown Line boat employees, located in West Frankfort. Two weeks later, they also handbilled at Bombardia and Mariah and scheduled an information meeting for early May.

3. Organizing at Chariot

Around the same time that the IUOE and IBEW were seeking to organize employees of the boat manufacturers in the Benton-West Frankfort area, a Chariot employee contacted the Laborers' Union expressing an interest in union representation. In late March-early April 1997, Chariot welder, Marty Williams, met with Mayhew to discuss the possibility of the Union organizing Chariot's employees. The two had worked together many years earlier at Mark Twain Boats in West Frankfort,[9] where the Union represented the employees and Mayhew was the local union president.[10]

With the help of Williams, an information meeting was held on the evening of April 16, at a local restaurant in West Frankfort. Nineteen Chariot employees (or approximately half of Chariot's production and maintenance work force) listened to Mayhew explain the benefits of joining the Union and the procedures for obtaining an election or recognition. All 19 signed authorization cards that evening.

The next morning, April 17, at approximately 7 a.m., Mayhew visited the Chariot facility to demand voluntary recognition. Mayhew testified that after entering through an employee entrance, he encountered Plant Manager Harley Greeno, who took him to his office where they waited for Chariot's president, Paul Schoen, to arrive. According to Mayhew, Greeno told him how he helped turn the Company around and how encouraged he was about Chariot's future business outlook. Paul Schoen, on the other hand, testified that Mayhew was found wandering through the plant without safety glasses in a restricted area. For demeanor reasons, I credit Mayhew's testimony on this point. The evidence shows that after Schoen arrived, Mayhew introduced himself, explained that he was organizing Chariot, and asked for voluntary recognition. Schoen replied, "I know who you are, I know what you are about, please leave the premises." (Tr. 372.)

After Mayhew left, Schoen called a labor attorney, who helped him prepare a speech to the employees. At midmorning, all Chariot employees were called to the cafeteria where they were addressed by Schoen and Jimmy Fulks. Reading from his prepared speech, Schoen told the employees that Mayhew was caught trespassing that morning in the production area without safety glasses. He said that Mayhew was asked to leave the Company's premise and was prohibited from returning. He explained why Chariot did not need a union and stated that the Company would oppose the Union's effort to organize the facility.

[7] While handbilling, Mayhew first met Jimmy Fulks, who told him to "get the hell off his property." (Tr. 367.)

[8] At the hearing, the Respondent moved to strike the evidence showing other unions organizing in the Benton-West Frankfort area on the ground there are no allegations pertaining to any other labor organization in the second consolidated amended complaint. I reserved ruling on the motion until after I considered all of the evidence and arguments. I now deny the motion. I agree with counsel for the General Counsel that she is not required to plead her evidence in the allegations of the complaint and I find that the evidence is particularly germane to the "chilling effect" allegations contained in the complaint.

[9] Mark Twain Boats filed for bankruptcy and closed. Eventually Chariot moved into the same building which formally housed Mark Twain Boats.

[10] By now, Mayhew had become director of organizing for the Union's midwest region.

Fulks' remarks were less restrained. He told the employees that "Randy Mayhew [was] a lying son of bitch," who cost him approximately $75,000 when he tried to organize Mariah in 1989–1990. Fulks stated that he beat Mayhew once and he would beat him again.

Later that day, Mayhew received a facsimile letter from Fulks and Schoen stating that they declined to voluntarily recognize the Union and that "we will use all lawful means to demonstrate to those who work here that a union is not in their best interests." (GC Exh. 12.) The letter also accused Mayhew of trespassing and prohibited him from coming upon Chariot's premises again.

Mayhew continued to meet offsite with the Chariot employees and eventually obtained nine more authorization cards. On April 22, the Union filed a petition for certification of representative with the NLRB's Regional Office. On or about April 24, NLRB Field Examiner Christopher Roche phoned Schoen to discuss scheduling a representation hearing. According to Schoen, he told Roche in confidence that Chariot was considering closing because it had never been profitable and its lease, which was due to expire June 19, was not renewable. By Schoen's account, Roche said that if he received an affidavit confirming that a decision to close had been made, it would obviate the need for an election, but that it would have to say more than "we're thinking about it." (R. Exh. 50(a).)

4. The events of April 30

On April 30, around 11:30 a.m., Mayhew held an organizing meeting outside the Company's parking lot. Standing on a grass median, which separated the street from the sidewalk next to the parking lot, Mayhew spoke to about 10 Chariot employees, who sat on the ground eating their lunches. Present were Mike Borga, Ronnie Cochran, Philip Colandro, David Frost, Brent Houseworth, Nick Reynolds, Ronnie Rice, Terry Simms, Gary Simms, and Marty Williams.[11] A few minutes into the meeting, Schoen came outside with Plant Manager Greeno. Schoen walked up to Mayhew, told him he was trespassing, and asked him to leave. Greeno stood in the parking lot a short distance away writing on a notebook pad while occasionally looking up toward the employees. When Mayhew refused to leave, arguing that he was on public property, Schoen stated that he would call the police, to which Mayhew responded, "Paul, showdowns bore me." (Tr. 443.)

Schoen went inside the facility, asked someone to call the police, and spoke by phone to Fulks apprising him of the situation outside. Fulks told Schoen he was coming over. In the meantime, Schoen went back outside with a camera to take pictures of Mayhew and the employees. Minutes later, a West Frankfort police officer arrived. After talking with Schoen, the officer could not determine if Mayhew was trespassing without investigating where Chariot's property ended and public property began. As the police officer was leaving, Fulks drove up, and briefly spoke to officer, who explained there was nothing he could do at that moment. Fulks then pulled into the Chariot parking lot, exited his car waving his arms, and immediately walked over to Mayhew and the employees. Fulks told the employees, "I don't know what you guys think you're doing, but you're not going to do that at this plant. I want you all to get up, go in and clock out and get out. This plant is closed." (Tr. 59.)

Everyone who was at the meeting went inside to gather their personal belongings, clock-out and leave. As they passed some employees seated outside at a company picnic table, as well as others inside the facility, they told them that the plant was closing down. Employee Cochran told stainless steel employees Chris Schmidtke, Ronnie Riddle, and Jeremy Griffith that the facility had been shut down and everyone should leave. However, lead employee, Eric Framberg, who did not attend the meeting outside, interceded telling Schmidtke and the others, that if they were not at the meeting they did not have to leave. (Tr. 510–511.) As those who attended the meeting started to leave, they were met at the door by Greeno, who inspected their lunchboxes and personal belongings.

Steven Danner, a hearing impaired employee, who worked as a painter in the trailer department, did not attend the union meeting. When he saw employees gathering their lunch boxes and heading for the door, he went up to Greeno shrugging his shoulders in hopes of determining what was going on. Greeno told him to go back to work. Minutes later, Danner was told to wait in the cafeteria with the other employees, who did not attend the union meeting.

Inside the cafeteria, Fulks and Schoen told the employees that the facility was closed. Fulks stated that if anyone was interested in employment with Mariah, he should write his phone number on the back of his timecard and sign it. Schoen then repeated the instructions to Danner and another hearing impaired employee, Arthur Morris.[12] As they completed the back of the timecards, the employees in the cafeteria placed them in their timecard slots and left without having their lunch boxes and personal belongings inspected.

5. Mariah steps in for Chariot

Step 1—hiring certain former Chariot employees on May 1

After the cafeteria meeting, Fulks phoned John Vincini, Mariah's director of human resources, to tell him he had closed down Chariot. He also told Vincini that if any former Chariot employee applied for employment at Mariah, they were to be treated like any other job applicant. Vincini then received a phone call from Chariot's plant manager, Harley Greeno. After confirming that Chariot had been closed that afternoon, Greeno told Vincini that several former Chariot employees would be applying for jobs at Mariah. According to Vincini, Greeno said "we need to hire some people for the stainless steel operation, what do we need to do?" (Tr. 735.) Vincini told Greeno that anyone interested in a job would have to complete an application, be interviewed, and go through an orientation. Greeno emphasized that they needed to do it as soon as possible.[13] Because Mariah never had a stainless steel and aluminum parts

[11] The evidence shows that alleged discriminatee Brad Rohach left work at noon that day for a doctor's appointment. (Tr. 598.)

[12] Both Morris and Danner were wearing union buttons at the time.

[13] Vincini did not interview Greeno, did not know when or if he was interviewed, and was unsure if Greeno became a Mariah employee on April 30 or May 1. He testified, however, that on May 1, Greeno was Mariah's stainless steel parts and aluminum fuel tank supervisor. (Tr. 735.)

operation, Vincini had no idea what positions needed to be filled or what qualifications were required to fill those positions. He nevertheless told Greeno that he could interview between 6–8 people an hour beginning at 5 a.m. the next morning. Greeno scheduled interviews for 19 employees, none of whom attended the union meeting.[14]

Greeno was also instructed by Fulks to call the employees, who attended the lunchtime union meeting, and tell them that they could apply for work at Mariah. In the late afternoon-early evening of April 30, Greeno phoned some of these employees[15] advising them that they could apply for jobs at Mariah by picking up an application at the former Chariot facility in West Frankfort or Mariah's main facility in Benton.[16] However, Greeno did not tell them when they could (or should) apply and, unlike the employees who did not attend the union meeting, Greeno did not schedule any interviews for the employees who attended the union meeting.

Between 5–9:30 a.m., on May 1, Vincini interviewed approximately 17 former Chariot employees, none of whom attended the union meeting the day before.[17] With Greeno present for most of the time, Vincini asked standard interview questions about background and work history. Because Vincini did not know what jobs they would be performing for Mariah, he generally explained to the applicants that they initially would be assigned to Mariah's stainless steel and aluminum parts operation at the former Chariot facility in West Frankfort . According to Vincini, specific skills were not a paramount concern.[18] What mattered was that "they had worked at Chariot . . . [and] [t]hey all had skills that would fit into the stainless steel operation in one way or the other." (Tr. 743.) By 9:30 a.m., all of the former Chariot employees, who were interviewed by Vincini that morning, as arranged by Greeno, were hired by Mariah and were working at the former Chariot facility, including David Bratts, Larry Fourez, Eric Framberg, Robert Hearn, Gary Herron, Jeremy Griffith, Bobby Isaacs, Bennie Isaacs, Justin Isaacs, Paul Johnson, Donald Morgan, James Morgan, Randy Murphy, Ronnie Riddle Sr., Chris Schmidtke, Gary Smith, and Daniel Taylor.[19]

Step 2—completing Chariot's work in progress

The 17 former Chariot employees,[20] who were interviewed by Vincini early May 1, received a brief orientation session and immediately reported for work at the Chariot facility in West Frankfort. Under the supervision of Greeno, who overnight became a Mariah supervisor, they essentially picked up where the Chariot employees left off one day earlier, occupying the same work area, using the same tools and the same materials, and completing the same job orders. (Tr. 744.)

Step 3—selling Chariot's trailer operation, leasing back its equipment, and transferring the stainless steel parts and aluminum fuel tank operation to Mariah's Benton facility

Over the next several weeks, and under Greeno's supervision, the former Chariot employees hired by Mariah on May 1–3, along with other Mariah employees, completed the stainless steel, aluminum fuel tanks, and trailer work-in-progress at the time Chariot closed. They assisted with the cleanup and shutdown of Chariot, as well as the relocation of the stainless steel and aluminum fuel tank equipment, tools, machinery, and materials to Mariah's Benton facility.

In the meantime, on May 8, Prestige Trailers, Inc., DuQuoin, Illinois, purchased Chariot's trailer jigs and agreed to pay Chariot royalties for 3 years in return for using Chariot's trademark. Jimmy Fulks personally handled the transaction because of his contacts in the boating industry. The Mercantile Bank, Mt. Vernon, Illinois bought the stainless steel equipment and used the proceeds to partially satisfy Chariot's outstanding loan debt. Mariah then leased back the equipment sold to the bank in order to complete the work-in-progress.

By June 19, the former Chariot facility was vacated and all of Mariah's operations at West Frankfort were moved to its Benton facility.

6. Mariah mounts a campaign against the Union

A few days after Fulks closed the Chariot facility on April 30, he called a plantwide meeting of all Mariah employees at the Benton facility. Fulks told the Mariah employees that despite rumors circulating that he had closed Chariot because of union activity, he wanted everyone to understand that he closed it for financial reasons. Fulks further stated that it was possible that the Union might picket and handbill Mariah because handbilling had occurred at other boat manufacturers in the area.[21]

[14] Vincini testified that Green called back later to say that one former Chariot employee, Chris Schmidtke, would not be available to interview until either the afternoon of May 1 or the morning of May 2.

[15] Greeno did not call David Frost, Brent Houseworth, or Marty Williams. He also did not call Brad Rohach, who was not at the union meeting.

[16] The evidence shows that Greeno did not personally speak with each employee that he called, but instead left the information on their answering machines.

[17] Although Danner and Morris signed the back of their timecards indicating an interest in working for Mariah, Greeno did not arrange an interview for them and Mariah never hired them.

[18] The evidence shows that the only former Chariot employees hired on May 1, who had prior stainless steel or aluminum fuel tank work experience were Eric Framberg, Chris Schmidtke, Chad Wilson, Paul Johnson, James Seagers, Gary Smith, and James Morgan. See GC Exhs. 42 (a)–(e), (m), and (s). Justin, Bobby, and Bennie Issaacs were truck drivers at Chariot (GC Exhs. 42 (g)–(i)). Daniel Taylor worked in plant maintenance (GC Exh. 42(k)). Ronnie Riddle was a general laborer (GC Exh. 42 (l)). Donald R. Morgan and Larry Fourez worked in trailer assembly (GC Exhs. 42 (n) and (p)). David Batts was a trailer painter (GC Exh. 42(o)), Gary Herron worked in purchasing/warehouse (GC Exh. (q)), Randy Murphy was a machine operator (GC Exh. 42(r)), and Robert Hearns worked in drafting/purchasing (GC Exh. 42(t)).

[19] Between May 2–6, Mariah hired former Chariot employees Greg Ramsey, James Segars, and Chad Wilson, none of whom attended the union meeting.

[20] The evidence shows that not everyone hired between May 1–6 was placed in the stainless steel and aluminum parts operation. Justin, Bobby, and Bennie Isaacs were placed in Mariah's "delivery" department; Daniel Taylor was placed in Mariah's maintenance department; and Randy Murphy was placed in Mariah' hull rigging/carpet department.

[21] The evidence shows that after Chariot abruptly closed on April 30, 1997, only a few employees attended the IUOE meeting in early May. One of those who attended asked to have his union authorization card returned to him. The evidence also shows that only one employee at-

Around the same time, Human Resources Director Vincini drafted a newspaper advertisement, which criticized Randy Mayhew and the Union, and praised Fulks for his community involvement. Vincini solicited money from employees to place the ad in a local newspaper, The ad, which appeared in the newspaper on May 9, was also posted on a bulletin board by the main entrance to the building and next to the employee time clock.

A day or so later, April Burress, an upholstery leadperson, gathered the employees in her department for a meeting in the tacking area. She introduced Tacking Supervisor Chad Miller, who told everyone assembled that the ad would be recirculated for employees to sign and would be placed in the newspaper again to show support for Fulks. He solicited donations to rerun the ad and asked for a show of hands of those in favor of the effort. All 50 department employees raised their hands, except Mary Nalley and 5 others. The ad was left on Burress' sewing machine for employees to sign.

Shortly after this meeting, Burress privately asked Nalley if she was going to sign the ad. When Nalley stated that she wanted to stay neutral and did not want to get involved, Burress began to extol the virtues of Jimmy Fulks; adding that she did not think it was very nice that people would not sign the ad. Nalley told her she would think about it.

A few days later, Vincini approached Nalley to see if she wished to sign the ad. Vincini disclaimed any involvement in drafting a petition that accompanied the ad and commented that the few employees who had not signed it had declined because they had family in a union. Nalley told him she too had family in a union, but was declining because she wanted to stay neutral. The ad subsequently was placed in the newspaper again and posted near the employee timeclock.

7. The union supporters unsuccessfully seek employment at Mariah

a. The early attempts

On April 30, Greeno personally spoke with former Chariot employee Ron Cochran telling him that he could pickup an application with his paycheck the next day at Mariah's West Frankfort facility. When Cochran arrived to pick up his paycheck, however, he was met by Greeno, Schoen, Fulks and his son, Rance Fulks, who told Cochran that Chariot was closed. Although Cochran received his paycheck in an envelope, there was no Mariah employment application inside.

While Vincini was still interviewing the individuals, who did not attend the union meeting, the other Chariot employees, who supported the Union, gathered at a nearby McDonald's, and traveled together to the Chariot facility. They too were met by Fulks, who told them the facility was closed. From the entrance, however, they could see several vehicles, belonging to former Chariot coworkers, parked in a fenced area outside the building. On May 2, the next day, the union supporters returned to Chariot's facility and were met by security guards, who turned them away.

Steven Danner, one of two hearing impaired employees, who did not attend the lunchtime union meeting outside, went to the former Chariot facility on Monday, May 5 to pick up his paycheck and a Mariah employment application. Although he signed the back of his timecard, Greeno did not arrange an interview for him on May 1. Instead, Greeno left a phone message for Danner on the evening of April 30, telling him he could submit an application when he picked up his paycheck. When Danner arrived at the former Chariot facility on May 5, the security guard radioed the front office, and he was allowed to enter the building. Inside a receptionist gave him a Mariah employment application which he completed and returned. Before leaving, however, Danner asked to speak with Greeno, but was told by the receptionist that Greeno was too busy.

On May 9, Mayhew and several former Chariot employees, who supported the Union, went en masse to Mariah's Benton facility to pick up employment applications. As they walked from the parking lot toward the office, Fulks intercepted the group from behind. As he rushed toward the front of the line, Fulks accused them of trespassing. Inside the reception area, Mayhew encountered Fulks, his son, Rance, Warehouse Supervisor John Griffith, and Supervisors Clint Joiner and Brian Beardon. When Fulks reiterated that they were trespassing, Mayhew replied that Greeno told them they could submit employment applications and that is what they intended to do. With voices escalating, the two began arguing, which drew Vincini to the reception area from his office down the hall. Griffith eventually picked up a stack of employment applications and told everyone that if they would step outside, they would receive an application. The group proceeded out to the parking lot, where everyone, except Mayhew, received an employment application.

b. The post-May 9 attempts

Brent Houseworth received an employment application on May 9, and submitted it on May 30. He had been a tig welder in Chariot's stainless steel and aluminum fuel tank department. Vincini interviewed Houseworth, questioned him about his skills, and asked him if there was anyone working at Mariah whom he knew. Houseworth mentioned that Rick Witcher, was a friend of his father. Witcher did not recommend Houseworth for employment and Houseworth was not offered a job with Mariah.

On July 10, Ronnie Cochran, David Frost, Michael Borga, and Ronnie Rice, all former Chariot stainless steel department employees, obtained and submitted employment applications at Mariah. They were never contacted by Mariah.

On July 14, brothers Terry and Gary Simms, former welders at Chariot submitted their employment applications to Mariah. Neither was called or hired by the Respondent.

On July 15, Nick Reynolds, a former Chariot aluminum fuel tank leadperson, mailed his completed employment application to Mariah. Upon receipt, it was clipped to the applications of Cochran and the others who applied in person on July 10. None was contacted or hired by Respondent.

On August 13, Marty Williams, the former Chariot welder who initiated the organizing drive, turned in his employment application at Mariah's Benton facility. The next day, August

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tended the IBEW meeting. Finally, the evidence discloses that both unions thereafter ceased their organizing efforts in the Benton-West Frankfort area.

14, Brad Rohach, who was a stainless steel buffer at Chariot, submitted his employment application. Rohach had learned that a friend had been hired by Mariah and that another was about to be interviewed.[22] Neither Williams or Rohach were contacted or hired by Mariah.

On August 19, former Chariot painter Arthur Morris, one of the two hearing impaired employees, who signed the back of their timecards on April 30, obtained an employment application at Mariah's Benton facility, which he completed and returned the next day. On August 28, 29, and 30, and September 1 and 2, Mariah advertised in the local newspaper for touch-up painters, but never contacted or hired Morris.

B. Analysis and Finding

1. The 8(a)(1) violations

a. The alleged unlawful photographing

It is settled Board law "that absent proper justification, the photographing of employees engaged in protected concerted activities violates the Act because it has a tendency to intimidate." *F. W. Woolworth Co.,* 310 NLRB 1197 (1992), citing, *Waco, Inc.,* 273 NLRB 746, 747 (1984). It is undisputed that on April 30, 1997, Chariot's president, Paul Schoen, took photographs of the union organizer Randy Mayhew conducting a union meeting on the grass median in front of Chariot's facility with several Chariot employees sitting around him. The Respondent argues that Mayhew was trespassing and that Schoen took the photos to preserve a photographic record of the trespass for future use in a criminal trespass proceeding. The evidence shows that 2 weeks earlier Schoen warned Mayhew in writing about trespassing on Chariot's premises and prohibited him from coming on the Company's property. Shortly after Mayhew started the April 30 union meeting, Schoen walked up to Mayhew, and told him that he was trespassing. Schoen also stated that he would call the police if Mayhew did not leave. When Mayhew refused to leave because he believed that he was on public property, Schoen went inside Chariot's building, phoned the police, came outside again with a camera, and began taking pictures of Mayhew surrounded by the employees.

Schoen credibly testified that he took the pictures because he "intended to prosecute a trespass action against [Mayhew] and it just gets rid of swearing contests." (Tr. 1330.) The evidence shows that 2 days later, on May 2, Schoen went to the West Frankfort Police Department, filed a complaint for criminal trespass against Mayhew, and gave the police the photographs taken on April 30 as evidence of where Mayhew was standing. Thus, the evidence establishes that Schoen not only believed that a criminal trespass had occurred, but that he acted upon that belief by filing a criminal complaint and using the photographs to support his case. Under these circumstances, I find that the photographs were legitimately taken to preserve proof for subsequent legal action thereby constituting a valid defense to the alleged unlawful photography. I therefore shall recommend that the allegations of paragraph 5A of the consolidated complaint concerning the photographing of employees be dismissed.

[22] The evidence shows that between May 29–November 27, 1997, Mariah hired approximately 159 employees. (GC Exh. 43.)

b. The unlawful notetaking

The undisputed facts also show that while Schoen took photos, Plant Manager Harley Greeno did more than merely observe employees attending a union meeting. He stood outside the building within plain view of the employees, writing in a notebook, while occasionally looking up at them. The notetaking was not routine; rather it was focused on the employees engaged in union activity. The Respondent asserts that it does not know why Greeno took the notes or what he wrote.[23] I find that the conduct created the coercive impression of compiling a list of union supporters for which no good cause has been demonstrated.[24] *Monfort of Colorado,* 298 NLRB 73, 86 (1990). Accordingly, I find that Greeno's notetaking, for which no explanation has been offered, violated Section 8(a)(1) of the Act.

c. The unlawful remarks of Jimmy Fulks on April 30

Paragraph 5B of the second consolidated amended complaint alleges that on April 30, Fulks told the employees attending the union meeting that he was closing the plant and firing everyone because the employees had engaged in union activities. The Respondent argues, and the evidence shows, that Fulks did not expressly state that he was shutting down the facility because of the union meeting.[25] When one employee explained that they were holding a union meeting, Fulks testified "I told them that I really didn't care what they did. I was shutting the operation down." Counsel for the General Counsel asserts that by "[t]elling employees that [he] did not care what they do and that he is closing the plant and to clock out while in the midst of a union organizing meeting is tantamount to telling various employees that the plant is shut down because they attended the union meeting." (GC Br. at p. 21.)

In order to accurately assess the import of Fulks' words, it is important to consider the circumstances and context in which they were made. The evidence shows that Fulks drove to the Chariot facility because Schoen told him by phone that the employees were holding a union meeting purportedly on Chariot's property, that Mayhew declined to leave after being told he was trespassing, and that the police had been called. As he approached the Chariot parking lot, Fulks encountered the po-

[23] Respondent's counsel argues that the General Counsel must prove what was written before a violation can be found, but offers no case law in support of that position. I disagree and find that it is the conduct and not necessarily the content that controls whether a violation has occurred. I also reject Respondent counsel's assertion that even if a violation occurred, it is too minor to warrant a remedy.

[24] In contrast, the evidence supports a reasonable inference that information recorded by Greeno was later used by him to discriminate against the union supporters. Hours after taking the notes, Greeno arranged interviews with Vincini for almost everyone who did not attend the Union meeting. The next morning, he attended most of those interviews, gave guidance to Vincini during the hiring process (Tr. 742, 950), and ultimately Mariah hired everyone who was interviewed that day. In contrast, none of the employees who attended the union meeting was interviewed or hired by Mariah.

[25] Only one witness, Brent Houseworth, testified that Fulks said, "I don't care what you do, I won't tolerate a damn union, clock out and go home." (Tr. 315.) For demeanor, and other reasons, I do not credit this portion of Houseworth's testimony.

lice officer leaving. He testified that "I told him that I had been informed that Randy Mayhew was trespassing on Chariot property and, I wanted him off our property. I introduced myself, I told him who I was. And I told him I wanted Mayhew off our property immediately. He told me he had to check to make sure, to see if he was trespassing. I told him I knew he was trespassing. And he declined to do anything at that point." (Tr. 1419.) Notably, Fulks did not tell the police that the employees were trespassing or that he wanted them removed from the premises. Thus, the evidence shows that at that point Fulks was primarily concerned with Mayhew trespassing.

By the time Fulks reached the Chariot parking lot, however, his attention shifted from Mayhew to the employees. The evidence shows that instead of addressing Randy Mayhew, the alleged trespasser, Fulks directed his comments solely to the Chariot employees attending the union meeting on their lunch break. Former Chariot employee, Marty Williams, credibly testified that when Fulks exited his car he said, "I don't know what you guys think you are doing, but you are not going to do that at this plant."[26] (Tr. 59.) What the employees were doing was having a union meeting on their lunch hour. Fulks knew that because Schoen told him so on the phone minutes before. He also knew that because the union meeting was still in progress when he arrived, and because "an employee made a statement, about us having a meeting," to which Fulks replied, "I told him I didn't really care what they did. I was shutting down the operation." (Tr. 1419.)

In this context, and under these circumstances, the evidence supports a reasonable inference that the union meeting was the focus of Fulks' comment "that you are not going to do that at this plant," even though he did not come right out and say it. When coupled with the announcement that the plant was shutting down, and that everyone should clock out, I agree with counsel for the General Counsel that Fulks' remarks were tantamount to telling the employees that the plant was being closed because of the union meeting. Accordingly, I find that Fulks' remarks tend to interfere with the employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

d. The employee handbook provisions

Paragraphs 6A and C of the second consolidated amended complaint respectively allege, and the parties stipulated, that between November 2, 1996, through April 30, 1997, and from August 2, 1997, Chariot and Mariah respectively maintained employee handbooks which, under a section entitled "Employee Relations," contained the following identical provision:

> [Respondent] is continually interested in providing the best possible pay, benefits, and working conditions for the betterment of employees and [Respondent]. The ability and desire of [Respondent] to continue in this manner is dependent on the absence of outside intervention, and the restraints caused by collective representation. While [Respondent] recognizes the lawful rights of employees to be represented by a labor organization [Respondent] does not believe such representation is in the best interests of employees and [Respondent]. [Jt. Exhs. 1 & 2, p. 5, VIII.B.]

The parties further stipulated that Chariot, as well as Mariah provided the handbook to all employees. Counsel for the General Counsel asserts that the provision contains an implied threat of loss of wages, benefits and working conditions if the employees attempt to organize.

Section 8(a)(1) of the Act prohibits an employer from interfering with, threatening, or coercing employees in the exercise of their Section 7 rights to support or oppose a labor organization, or to engage in or refrain from engaging in concerted activity. This prohibition, however, is counterbalanced by Section 8(c) of the Act which states:

> Expressing any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

In *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969), the Supreme Court established the general standard for evaluating the lawfulness of employer statements concerning employees' Section 7 activity. The Court effectively framed the analytical question as whether the employer's statement constitutes an unlawful threat of retaliation in response to protected activity, or a lawful, fact-based prediction of economic consequences beyond the employer's control. Id. at 617–619.

The Respondent's written assertion that its "ability and desire" to continue paying the best possible pay, benefits, and working conditions "is not couched in terms of what may happen "if" the employees seek collective representation. The statement is unaccompanied by any objective factual information explaining why there would likely be a change as a result of unionization. See *IPLL, Inc.*, 321 NLRB 463, 468 (1996). Further, the provision conveys the impression that its ability to continue paying the best possible pay, benefits, and working conditions is solely within its control. I therefore find that the written statement constitutes an implied threat of retaliatory conduct.

The Respondent argues, however, that no violation of the Act has occurred because the General Counsel has not proven that any employee actually read the provision. It relies on *E & L Transport Co. v. NLRB,* 85 F.3d 1258 (7th Cir. 1996), where the court stated that an unlawful verbal statement made, but not heard by an employee, cannot give rise to an 8(a)(1) violation. I find that the Respondent's reliance on *E & L Transport Co.* is misplaced.

A verbal statement made by a supervisor, if unheard, is evanescent and therefore does not tend to interfere with an employee's Section 7 rights. On the other hand, a written provision, contained in an employee handbook that was given to all employees, is an everlasting reference source and a perpetual reminder to the employee of the employer's written statement. That is particularly true, where, as here, the employee handbook was represented by the employer to be a memorialization of the terms, conditions, and standards of its personnel opera-

[26] Fulks did not deny making this statement. Rather, he stated that he could not remember "all the statements" that he made while talking to the employees and testified as what he "basically told them." (Tr. 1418.)

tions, and was distributed to the employees, who were encouraged by the employer to "acquaint themselves fully with the content of the [handbook]."[27]

Accordingly, I find that the maintenance of the above-referenced rule violates Section 8(a)(1) of the Act.

Paragraphs 6B and D of the second consolidated amended complaint also allege that, and the parties stipulated, that between November 2, 1996, through April 30, 1997, and from August 2, 1997, Chariot and Mariah respectively maintained employee handbooks which, under a section entitled "Employee Relations," contained the following identical provision prohibiting:

> Wasting time, loitering or engaging in nonwork-related conversation on [Respondent] property during working hours.[Jt. Exhs. 1 & 2, p.45, D.1.]

The General Counsel argues that the provision is overly broad and presumptively invalid. I agree. The published rule on its face prohibits all conversation during working hours, that is, from the beginning to the end of workshifts, including periods of the employees' own time. Because employees are presumptively privileged to solicit union support in nonworking areas on company property during their breaktimes, I find that the above-reference rule violates Section 8(a)(1) of the Act. *Our Way, Inc.,* 268 NLRB 394 (1983).

2. The 8(a)(3) violations

a. The single-employer issue

Paragraphs 2E, F, and G of the second consolidated amended complaint, read in tandem with paragraphs 8A–C, allege that between April 30 and June 19,1997, Chariot and Mariah were a single-integrated employer,[28] and that the closing of Chariot was a partial closing of the single employer, motivated by anti-union animus, and intended to chill unionism at Mariah.

In determining whether two nominally separate employing entities are a single employer, the Board considers four factors: common ownership, common management, interrelations of operations, and common control of labor relations. *Dow Chemical Co.,* 326 NLRB 288, 288 (1998). No single factor is controlling and not all need be present. "Rather, single-employer status depends on all the circumstances and is characterized by the absence of the arm's-length relationship found between unintegrated entities." Id. [Citations omitted.] Applying this four-factor test to the facts of the case, the evidence shows the following.

(1) Common ownership

Mariah and Chariot are two closely held stock corporations. Fulks owns 89 percent or the vast majority of controlling stock of Mariah. He also owns 50 percent of Chariot's stock, a subchapter S corporation, which he helped start in 1994. The other 50 percent of Chariot's stock is owned by Schoen, a cofounder of the corporation. Evidence of common ownership is therefore present.

(2) Common management

Fulks is Mariah's president and treasurer, as well as a member of its board of directors. The remaining corporate directors are his wife, Gerald Gene Fulks, his son, Rance Fulks, Mariah's chief financial officer, Guy W. Coons, and Schoen,[29] who is also Mariah's corporate counsel and registered agent.

In addition, the evidence shows that Fulks was chairman of the board of directors and treasurer of Chariot. Schoen was Chariot's president, registered agent, and a member of Chariot's board of directors. The other Chariot directors were their respective wives, Gerald Gene Fulks, and Bobbi S. Schoen, who was also Chariot's corporate secretary.[30] Thus, the evidence shows that control of both corporations rests with a small group comprised of many of the same people with Fulks and Schoen holding key management positions in both companies.

The events at issue here also underscore that Fulks was actively involved in decision-making at both corporations. It was Fulks, not Schoen, who abruptly ordered Chariot to close down on April 30. He did so without any vote or discussion among Chariot's board of directors. When asked why he did not seek board approval, Fulks testified, "[I]it was not necessary." (Tr. 810.) That statement, alone, supports a reasonable inference that Fulks exercised actual control over Chariot corporate decisions.

The evidence also discloses that after deciding to close Chariot, Fulks personally arranged for the bank to purchase Chariot's equipment and then negotiated a lease-purchase agreement, which allowed Mariah to acquire the same equipment, thereby avoiding any interruption of the stainless steel work in progress. Fulks also facilitated the transition of work to Mariah when he instantly hired Chariot Plant Manager Harley Greeno as a Mariah supervisor and empowered him to oversee the stainless steel parts and aluminum ladder work previously performed by Chariot. Greeno immediately arranged interviews with Vincini, which resulted in the hiring several former Chariot employees, like, Eric Framberg, a leadperson in the Chariot's stainless steel department, who went to work for Mariah the next day performing essentially the same duties he had performed for Chariot. Thus, the evidence supports a reasonable inference that Fulks was actively involved in making key management decisions simultaneously for both Chariot and Mariah, and that an "arm's-length relationship" did not exist between these companies.

(3) Centralized control of labor relations

Indicia of centralized control of labor relations include the virtually identical manuals of personnel policies, procedures and operations, that were written by Fulks for Mariah and then modified by Schoen for Chariot and Mariah. The manuals contain the same policies concerning employer rights, substance abuse, selection (hiring) and examination, hours, meals and rest periods, compensation and payroll practices, benefit, leaves and holidays, etc. In addition, the evidence shows that Chariot's

[27] See Jt. Exhs. 1 & 2, p.1.

[28] Counsel for the General Counsel alternatively argues that Chariot and Mariah were alter ego employers and that after Chariot closed, Mariah operated as a disguised continuation of Chariot.

[29] Schoen does not own stock in Mariah.

[30] The evidence shows that, Zella Ferlong, who was employed by Mariah as Fulks' personal secretary, also served as Chariot's assistant corporate secretary, and that in July 1997, Bobbi Schoen was replaced as Chariot's secretary, by Fulks' son, Rance.

health benefits were centralized under Mariah for cost benefit reasons. Chariot employees were covered by Mariah's health insurance plan and the cost incurred by Mariah was billed back to Chariot.[31] The evidence also reflects that an annual picnic and Christmas party was jointly attended by Mariah and Chariot employees.

The evidence further shows that Fulks was actively involved in key labor relations decisions. Schoen testified that he consulted Fulks on personal decisions, like hiring the two plant managers who preceded Harley Greeno (Tr. 1311), because he and Fulks "had a mutual ownership interest in the business." The evidence also shows that at times Fulks effectively overshadowed Schoen, even though Schoen was president of Chariot. For example, on April 30, Fulks gave the orders for everyone to go home and to shut the plant down, even though Schoen was present. Likewise with Mariah, Fulks told Greeno to inform the former Chariot employees that they could apply for work at Mariah and also instructed him to hire employees for the stainless steel operation. The evidence further shows that, after Chariot closed, Fulks likewise made arrangements for Mariah to hire Chariot's production coordinator, Fran Brock. (Tr. 1083.) Thus, the evidence supports a reasonable inference that, at critical times, Jimmy Fulks and Jimmy Fulks alone, made critical labor relations decisions for both corporations indicating a common control of labor relations.[32]

(4) Interrelations of operations

The undisputed evidence establishes that Chariot and Mariah operated at a common situs at West Frankfort, Illinois.[33] The building contained approximately 212,000 square feet of space of which Chariot occupied 80,000 square feet. Although the two operations were separated by a firewall, Chariot and Mariah shared the same parking lot, restrooms, breakroom, and timeclock.[34] The evidence also discloses that Chariot manufactured trailers, mostly for Mariah. It was the exclusive source of stainless steel parts and aluminum fuel tanks for Mariah boats, which were made at Mariah's main facility only 6 miles away. Because most of Chariot's trailers were made to fit Mariah's boat and because all of its stainless steel and aluminum parts were custom made for Mariah, the evidence supports a reasonable inference that the two corporations had many of the same customers.

In addition, the evidence shows that the products of both corporations were often depicted in the same sales brochures[35] and that Mariah's sales personnel emphasized that Chariot stainless steel parts were part of Mariah's integrated manufacturing process. Stephen E. Coil, who in 1997 was Mariah's director of sales and marketing—northeast region, testified that on a plant tour "one of the things that we talk about on our boats is—and about the company itself is—how we're vertically integrated. Probably, more so than any company in the industry. We build more components for our boats. So, that's one of the selling pitches that we use in selling. We build our own aluminum fuel tanks. We build our own stainless steel rails and ladders." (Tr. 1051, 1053.) He specifically stated that in the course of a sales presentation he would mention Chariot trailers and stainless steel parts because that was part of the vertical integration. (Tr. 1053.)

The interrelationship of operations between Mariah and Chariot is best exemplified by the manner in which Mariah took over Chariot's entire stainless steel and aluminum parts operation when Fulks closed Chariot. The day after Chariot closed, its equipment for manufacturing stainless steel and aluminum parts was taken over by Mariah and eventually a lease-purchase agreement was negotiated with the bank. The raw materials for manufacturing the stainless steel and aluminum parts, as well as the parts in progress were also taken over by Mariah.[36]

The evidence also shows that half of Chariot's work force followed the work, along with the equipment to Mariah. Approximately 20 Chariot employees, who did not attend the union meeting, were hired by Vincini between May 1–3, and returned to work at the Chariot facility under the supervision of Harley Greeno, Chariot's former plant manager. The ease with which the overnight transfer was accomplished, particularly without any preplanning, supports a reasonable inference that the two companies were part of a highly integrated operation.

Under all of these circumstances, I therefore find that Chariot and Mariah were a single employer.

The General Counsel also argues, however, that Mariah was the alter ego of Chariot. While the criteria for determining alter ego status is similar to that used to determine single employer status, the Board also considers in determining alter ego status whether the two enterprises have the same business purpose and whether the alter ego was created in order to evade responsibilities of the Act. Because the two corporations did not have the same overall business purpose (i.e., Chariot manufactured boat trailers and Mariah manufactured boats), I find that Mariah alternatively was not the alter ego of Chariot.

[31] Although Chariot and Mariah had separate commercial property, auto, and umbrella liability insurance policies, the evidence discloses that they were purchased from the same insurance carrier and that Mariah was named as a coinsured, along with the bank, on Chariot's commercial property insurance policy. (Tr. 23.)

[32] The Respondent nevertheless argues that day-to-day labor relations at both facilities were separately controlled by Schoen at Chariot and Vincini at Mariah. The fact that day-to-day labor relations matters are handled at the local level is not controlling, *Task Force Security & Investigations,* 323 NLRB 674, 677 (1997), particularly, where, as here, one corporate officer/owner can effectively dictate labor relations policy at both corporations.

[33] Mariah's main plant was located approximately 6 miles away in Benton, Illinois.

[34] Fulks testified that Mariah had its own timeclock, but the credible evidence establishes otherwise.

[35] The Respondent argues, and the evidence shows, that Chariot paid for a portion of the brochure and that occasionally trailers manufactured by other companies were depicted with Mariah boats. However, that does not detract from the evidence that Chariot stainless steel parts were touted by Mariah as part of its integrated manufacturing process or that most Chariot trailers were custom made for Mariah boats.

[36] There is no evidence that Mariah paid Chariot for the raw materials used to complete the stainless steel work in progress, which further underscores the absence of an arm's-length relationship between the two corporations.

b. The unlawful partial closing

(1) The analytical framework

The complaint alleges, and the General Counsel argues, that the Respondent Chariot/Mariah partially closed Chariot in order to stop the unionizing effort at Chariot and to chill any threat of unionism at Mariah's nearby Benton facility. In the seminal case of *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263 (1965), the Supreme Court held that "a partial closing is an unfair labor practice under Section 8(a)(3), if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing will likely have the effect." 380 U.S. at 275. The Court stated that the following elements are necessary in order to find an unfair labor practice:

> If the persons exercising control over a plant being closed for anti-union reasons (1) have an interest in another business, whether or not affiliated with or engaged in the same line of commercial activity as the closed plant of sufficient substantiality to give promise of their reaping a benefit from the discouragement of unionization in that business; (2) act to close their plant with the purpose of producing such a result; and (3) occupy a relationship to the other business which makes it realistically foreseeable that its employees will fear that such business will also be closed down if they persist in organizational activities, we think that an unfair labor practice has been made out. 380 U.S. at 275–276.

Because direct evidence of motivation and chilling effect is rarely available, proof of these elements may be based on "fair inferences arising from the totality of the evidence considered in light of the then-existing circumstances." *Darlington Mfg. Co.,* 165 NLRB 1074, 1983 (1967), on remand from *Textile Workers v. Darlington Mfg. Co.,* supra. In determining whether or not the proscribed "chilling" motivation and its reasonably foreseeable effect can be fairly inferred from the totality of then-existing circumstances, the Board considers the presence or absence of several factors including, among other things:

> contemporaneous union activity at the employer's remaining facilities, geographic proximity of the employer's facilities to the closed operation, the likelihood that employees will learn of the circumstances surrounding the employer's unlawful conduct through employee interchange or contact, and, of course, representations made by the employer officials and supervisors to other employees.

Bruce Duncan Co., 233 NLRB 1243 (1977).

(2) Interest and relationship

As to "interest" and "relationship," the Court and the Board have stated that a single-employer finding, like the one above, necessarily satisfies these elements. *Darlington Mfg. Co.,* 380 U.S. at 276; 165 NLRB at 1077. The evidence here establishes that the "person exercising control over" Chariot and Mariah (i.e., Fulks), has a substantial interest and significant control over another business (i.e., Mariah) from which he would reap a benefit by discouraging unionization at Chariot. As shown above, in addition to being an officer, director, 50 percent shareholder, and active corporate decision maker at Chariot, Fulks is the president, treasurer, director, and majority shareholder of Mariah. Not only does the evidence show the existence of power of control, but also the actual exercise of that power given Fulks' involvement in events surrounding the closing of Chariot and the transition of work to Mariah. Thus, I find that interest and relationship elements have been satisfied.

(3) Unlawful motivation and reasonably foreseeable chilling effect

Ample evidence exists of the Respondent's antiunion animus. To begin with, the implied threat of loss of wages, benefits, and working conditions contained in the Respondent's employee handbook is evidence of antiunion animus. Cf., *Lampi LLC,* 327 NLRB 222 (1998); see also *Gencorp.* 294 NLRB 717 fn. 1, 730–731 (1989). Contempt for the Union is also reflected by Fulks' words, when he precipitously closed Chariot on April 30. According to the unrebutted evidence, Fulks told the employees attending the union meeting on their lunch hour, "I don't know what you guys think you're doing, but you're not going to do that at this plant. I want you all to get up, go in and get out. This plant is closed." (Tr. 59.) The evidence supports a reasonable inference that Fulks was referring to the union meeting taking place on the sidewalk in front of the Chariot, which he disapproved of. His disapproval was further expressed by his conduct in precipitously closing the plant.

Further evidence of antiunion animus is reflected in the manner of treatment received by employees attending the union meeting compared to those who did not attend the meeting. Everyone outside at the meeting was ordered to clock out immediately without explanation and thereafter their personal belongings were searched as they exited. Everyone inside was asked to attend a meeting in the cafeteria where they were told that the plant was being closed purportedly for financial reasons. They then were allowed to leave without having their personal belongings searched. That evening, some, not all, of the employees who attended the Union meeting received a phone message from plant manager Greeno telling them that they could apply for a job at Mariah, but without telling them when they could apply and without any attempt to schedule an interview for them the following morning. In contrast, Greeno arranged interviews for everyone inside, except two employees, with Mariah Human Resources Manager Vincini the next morning. The two inside employees, who were not interviewed, were wearing union buttons at the cafeteria meeting. No one who attended the union meeting was ever interviewed or hired by Mariah, while everyone on the inside who was interviewed was hired the day they were interviewed. I find that this evidence of disparate treatment was motivated by antiunion animus.

Lastly, the timing of the closing establishes the Respondent's antiunion animus. The undisputed evidence shows that had it not been for the union meeting, Fulks would not have closed the Chariot facility on April 30. On cross-examination by the Union's counsel, Fulks was asked:

> Q. My question is, sir, but for the union meeting which occurred on April 30, you had not [sic] plans to close the facility on April 30th?
>
> A. That is correct.

(Tr. 837.) Fulks' admission, standing alone, establishes anti-union animus.[37]

In addition to the above, the credible evidence supports a reasonable inference that the closing was motivated by contemporaneous union activity at Mariah's nearby Benton facility. The unrebutted evidence reflects that between February–April 1997, the IUOE sought to organize Mariah's employees. Organizing director, Rodney Hale testified that he met with Mariah employees in various cafes and bars in Benton. His testified was corroborated by fellow IUOE organizer Tom Reidelberger and by Mariah employee, Mary Nalley, who testified that she met with Hale and Reidelberger in late March 1997. According to Nalley, she agreed to help Hale organize a union at Mariah and signed a union authorization card. When Local 399 subsequently obtained a few more authorization cards from Mariah employees, it scheduled an organizing meeting at a local hotel in the early part of May.

Also, on or about April 18, the IBEW Local 702 handbillled at Mariah as part of an overall effort to canvas support for a union organizing effort among the boat industry employers in the Benton-West Frankfort area. IBEW organizer Charles Hughart credibly testified that two members of their organizing committee passed out handbills at Mariah. His testimony essentially was corroborated by former Mariah Regional Sales Manager Kenneth Crews, who acknowledged that handbilling occurred at Mariah sometime between January-April 30. (Tr. 989.) Thus, the evidence establishes that on or about the same time that the Union was seeking to represent Chariot's employees, two other unions were engaged in organizing activity at Mariah, and that the Respondent, through its regional sales manager, was aware of the contemporaneous union activity.

Indeed, Fulks acknowledged that there was union activity in the Benton-West Frankfort area and that he anticipated organizing activity at Mariah. According to Mariah employee, Mary Nalley, Fulks told the employees that the unions were handbilling and picketing the boating industry employers in the area, and that he expected some handbilling at Mariah. (Tr. 331.) The evidence further reflects there was an expectation that Mayhew might picket Mariah after Chariot closed. On May 3, Schoen faxed Mayhew a letter warning him not to come on Mariah's property or else he would be prosecuted for criminal trespass. (R. Exhs. 48(a)–(b).) Thus, in addition to animus toward the Union, the evidence supports a reasonable inference that the decision to close Chariot was motivated by a concern about contemporaneous union activity at, and all around, Mariah, as well as an expectation that the Union's organizing activity would carryover from Chariot to Mariah.

The likelihood that unionism at Chariot would spread to Mariah is evident from the fact that Mariah's Benton facility was only 6 miles from the Chariot/Mariah facility in West Frankfort and, more importantly, that Chariot and Mariah were housed in the same building at West Frankfort. Even though the two operations were separated by a cinderblock firewall, the evidence establishes that the Mariah employees at West Frankfort interfaced with the Chariot employees everyday. They shared the same lunchroom, restrooms, parking lot, timeclock, nominal supplies, and often borrowed each others' equipment. When Chariot was closed on April 30, half its work force became Mariah employees, who continued working along with the other Mariah employees at that facility until June 19, when everyone was relocated to the Benton facility. Thus, the evidence supports a reasonable inference that if the Union wanted to parlay a successful organizing campaign at Chariot into an organizing campaign at Mariah, the West Frankfort facility was a likely place to start and that union activity would have likely spread to the Benton facility which was only 6 miles away.

In addition, the space sharing arrangement at West Frankfort and the close geographic proximity of Benton made it more likely than not that the Mariah's employees would see, hear, and read about the Chariot plant closing as evidenced by the actual chain of events which immediately followed the plant closing. The undisputed evidence shows that when Fulks abruptly closed Chariot, word of the closing quickly spread throughout the building creating confusion among the other Chariot employees, who did not know whether to leave or stay. It is unrealistic to believe that the Mariah employees, who shared the same lunch facilities with the Chariot employees, were insulated from the commotion or would have likely been insulated from learning the circumstances surrounding the abrupt closing. Even if they did not learn of the circumstances surrounding the closing on April 30, the evidence supports a reasonable inference that they learned about it the very next day, when most of the Chariot employees who did not attend the union meeting, returned to the West Frankfort building as Mariah employees. Thus, the evidence supports a strong likelihood that the Mariah employees at West Frankfort learned about the circumstances surrounding the closing through employee interchange or contact.

Also, the media attention which the plant closing received in the small community of Benton-West Frankfort makes it more likely, than not, that the Mariah employees located in Benton learned of the circumstances surrounding the plant closing. The evidence reveals that there was a substantial amount of local newspaper coverage immediately following the plant closing and that both Fulks and Mayhew spoke to, and were quoted in, the press on numerous occasions about why Chariot was closed. (Tr. 811.) The news coverage therefore created a heightened awareness in the community, which included Mariah employees, that the closing took place in the midst of a union organizing drive.

The evidence also shows that the Mariah employees at the Benton facility learned about the circumstances surrounding the Chariot closing from Fulks himself. Purportedly in response to stories that he had closed Chariot because of the union activity, Fulks called a meeting of Mariah employees in early May, where he denied closing Chariot because of the union and told everyone that the plant was closed for financial reasons. (Tr. 331.) In the same breath, however, Fulks told the employees that the Union might attempt to handbill at Mariah, because handbilling was occurring at other area boating industry em-

[37] The admission also unequivocally establishes a violation of Sec. 8(a)(3) of the Act under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), because Fulks admitted that had it not been for the union activity on April 30, he would not have closed the facility on that date.

ployers. Fulks then assured the employees that there was no cause for alarm because he was going to hire a security force for the Benton facility. In the greater scheme of things, it was reasonably foreseeable that, by raising the issue and denying that Chariot was closed because of union activity, Fulks would bring attention to the circumstances surrounding the closing and fuel speculation as to whether union activity was a factor.

In addition, on the heels of Fulks' remarks, Mariah's human resources manager, John Vincini, embarked on a campaign to solicit employee support and donations for a newspaper advertisement, that he helped draft, chastising Mayhew, denouncing the Union, and praising Fulks. A copy of the published advertisement was subsequently circulated by Mariah supervisors for employees to sign in a show of support for Fulks. I find that it was foreseeable that the circulation and publication of the newspaper ad would prolong the discussion about why Chariot was closed, and underscore for Mariah's employees the fact that management was opposed to the Union.

Finally, the credible evidence shows that after Chariot was abruptly closed on April 30, employee interest in unionizing the boating industry employers in the Benton-West Frankfort area dissipated. Local 399 organizer, Rodney Hale, testified that his union held a meeting for Mariah employees at a local hotel during the first few days of May, but only a few employees attended. Those that did attend did not express any interest in joining Local 399, and one employee, who previously had signed a written authorization card, asked for it back. IBEW Local 702 organizer Charles Hughart similarly testified that after his union handbilled Bombardia and Mariah in late April, it received phone calls from employees interested in joining the union. An organizational meeting on May 3 was attended by one Bombardia employee and a meeting on May 9 was attended by three Mariah employees. After that, both Local 399 and Local 702 discontinued their efforts to organize the boat manufacturers in the area.

In light of the Respondent's animus toward the Union, the timing of the closing, and the contemporaneous union activity at Mariah, I find that the Respondent precipitously closed Chariot to chill unionism at Mariah. I further find that because Chariot and Mariah occupied the same building, and shared common areas at West Frankfort, and because of the size of the community and the close geographic proximity of West Frankfort to Benton, the Mariah employees would, and did, see, hear, and read about the circumstances surrounding the closing, and therefore the chilling effect was reasonably foreseeable.

3. The Respondent's defense

The Respondent first argues that Fulks and Schoen decided to close Chariot for economic reasons. The evidence shows that from its inception Chariot was not a profitable operation. Marvin Samples, who became Chariot's controller in February 1997, testified after he familiarized himself with Chariot's financial statements, he realized that Chariot had been losing money for years and that it would continue losing money for the foreseeable future. Samples explained that Chariot was financially overextended and had difficulty paying its suppliers on a timely basis. A monthly analysis prepared by Samples disclosed that man-hours to produce trailers were exceeding estimates, thereby increasing the cost of production.

The evidence also shows, however, that even though Chariot had been losing money all along, the bank continued to extend credit to the Company and Chariot continued to purchase production equipment, particularly stainless steel equipment.[38] The evidence also shows, and Samples conceded, that for the period January–April 1997, Chariot's losses had begun to decrease and its financial position had improved, with the stainless steel operation actually making a profit (R. Exh. 40(a)-(e)) and the overall operation actually producing ordinary income of approximately $90,000, rather than a net loss. (R. Exh. 62.) In fact, in early April, shortly before the Union organizing drive began, the Company gave most of its employees a wage increase, retroactive to March. Thus, the evidence discloses that while Chariot's financial position was not good, that was nothing new, and that it was getting better, not worse, around the time facility closed.

The Respondent further argues that Fulks and Schoen decided to close Chariot on May 2 because there was no more work to do. Schoen testified that he and Fulks agreed on the May 2 date because "Jimmy had told me that there were no orders at Mariah, that Mariah didn't have any need for Chariot products, stainless steel or aluminum. And there were no boats going to be built to put those products on, no trailers to build. . . . ." (Tr. 1327.) While Fulks stated that boat production was slow at Mariah from April–June, he also testified that "[t]here were areas of the stainless steel and aluminum that was running behind, lagging behind, had not kept up, that we had things back-ordered, so to speak." (Tr. 826.) According to Fulks, the stainless steel parts and aluminum fuel tanks were crucial to Mariah's operation. As a result, 20 former Chariot employees (or almost half of Chariot's work force), who did not attend the union meeting, were instantly offered employment with Mariah on May 1 in order to complete that work-in-progress, which included the completion of trailers, even though many of them had never before worked in the stainless steel and aluminum department.[39]

In addition, Renee Brock, a former Chariot trailer production coordinator, testified that as of Friday, April 25, there were 45 trailers on schedule, with 11 waiting to be added, and 13 trailers that had to be developed. As of Tuesday, April 29, the number of trailers on schedule increased to 55, with 8 waiting to be scheduled, and 8 that had to be developed. The credible evidence further shows that around this time, and for several weeks prior to, many Chariot employees were working 50–55

[38] Chariot's monetary losses were not necessarily an incentive to close the facility. The evidence shows that as a subchapter S corporation, the losses passed directly through to the two principal shareholders, Fulks and Schoen, who were entitled to use the losses to offset personal income on their individual income tax returns. (R. Exhs. 60 & 61.)

[39] For example, former Chariot employee, Paul Johnson, was a warehouseman at Chariot. Justin Isaacs, Bobby Isaacs, and Bennie Isaacs were truckdrivers who delivered trailers. Daniel Taylor worked in plant maintenance and Ronnie Riddle was a general laborer. Donald Morgan worked in trailer assembly, along with Larry Fouret Jr. (See GC Exhs. 42(a)–(t).)

hours per week earning considerable amounts of overtime. Thus, contrary to Schoen's assertions that there was no need for stainless steel and aluminum parts at Mariah, and that the trailer work overall was slow, the evidence, including, but not limited to, Fulks' testimony, shows that there was work to be done when Chariot closed on April 30.

Next, the Respondent argues that it decided to close Chariot because its landlord would not extend the building lease beyond June 19 without a proposal to buy the building. The evidence shows that in mid-April 1997, Schoen was advised by Chariot's new landlord that its lease would not be extended beyond June 19, unless Chariot was interested in making a proposal to buy the building. Schoen testified that he was not interested in purchasing the building because it was in poor condition and because it would take several hundred thousands of dollars to make repairs. Schoen further testified that he did not tell the new owner that he was not interested in purchasing the building because he did not want to foreclose the possibility of getting another lease extension. (Tr. 1317.) According to Schoen, he realized on or about April 18, that it would not be possible to extend the lease, when the landlord's representative, Fred Gruen, advised him that the purchase price of the building was 1.35 million dollars. I find that at best Schoen's testimony establishes that the Respondent had at least until June 19 before it would be forced to vacate the West Frankfort facility, if a lease extension could not be otherwise be obtained, or forced to close the Company, if it could not find another location. The evidence stops short, however, of establishing that the landlord notified Schoen that premises had to be vacated by June 19 or that there were no other suitable locations available.

The contradictory testimony of Fulks and Schoen concerning when they decided to close Chariot on May 2 raises additional doubts about the reasons proffered for closing the Company. Fulks testified that he and Schoen decided that they would close Chariot on May 2 soon after Fred Gruen told Schoen that "the building price was 1.35 million dollars and that was roughly April 18th to 21st, somewhere in that range." (Tr. 799, 1321.) But Schoen testified that when Gruen told him the purchase price, and he advised Fulks, they did not know exactly what to do nor did they know exactly when Chariot might close. (Tr. 1322–1323.) Schoen also testified that when he spoke to NLRB Field Examiner Christopher Roche, on April 24, he did not tell him that Chariot would close on May 2 because that decision had not yet been made. When asked by Respondent's counsel "[d]id you specifically tell him that you were going to be shutting down on May 2?" Schoen responded, "No," because "I hadn't filed, at that time, decided to shut down on May 2nd." (Tr. 1324.)

Moreover, contrary to Fulks, Schoen testified that the decision to close on May 2 was not made until April 26, 2 days after he spoke with Roche. On that date, Chariot's attorney, Ed Noonan, purportedly told Schoen that Roche had betrayed a confidence by disclosing that Chariot was considering closing. When Schoen was asked by Respondent's counsel if he discussed the alleged breach of confidence with Fulks, he stated:

> A. I did.
>
> Q. About when would you have passed that along to Jimmy?
>
> A. Immediately after I learned of the breech [sic] from Mr. Noonan.
>
> Q. And as a result following this information did you and Mr. Fulks?
>
> A. Yes, we did.
>
> Q. And what did you decide?
>
> A. That's when we decided that we, the plant would be closed and production would cease permanently on May 2nd, 1997.

(Tr. 1327.) Thus, contrary to what Fulks stated, Schoen testified that the decision to close Chariot was not made until April 26, which was after he learned that the Union had filed an election petition.

Adding further doubt to the sequence of events concerning when the purported decision to close Chariot on May 2 was made is the evidence showing that Schoen never told the NLRB Field Examiner that Chariot would close on May 2, even though he knew that there would be no need for an election if he submitted an affidavit confirming that a decision had been made to close Chariot. According to Schoen, he told Roche on April 24 that "we were fixing to shut down Chariot" (Tr. 1324), without mentioning a date, to which Roche replied that he would need an affidavit confirming that fact.[40] Although Schoen is a lawyer, who could have easily prepared a simple affidavit and faxed it to Roche on April 26, ending any speculation as to when, if ever, Chariot was going to close, he failed to do so. Instead, on April 26, Schoen sent Roche the following letter, dated April 26, 1997, which states, in pertinent part:

> I then told you that because our young company had never been profitable; our losses have been substantial; and our lease which expires June 19, 199,7 is not renewable, our company was considering ceasing manufacturing operations and closing its production facility. I told you we were required to vacate the premises by June 19, 1997. You commented that the hearing was a fact-finding proceeding and was not adversarial. You discussed the possibility of an affidavit regarding a decision to close; you said the decision to close which would obviate the need for an election would have to be more than "*we're thinking about it*." [R. Exh. 50(a). Emphasis added.]

Not only does Schoen's letter never mention the possibility of closing the plant on May 2, it does not state nor imply that a decision had been made to close Chariot. A plain reading of the letter reflects that at best Schoen and Fulks were only "considering" closing Chariot, which contradicts Schoen's testimony that he told Roche that they were "fixing to shut down Chariot." Thus, the evidence shows that at no time prior to closing Chariot did the Respondent advise the NLRB Regional Office that it definitely was closing the facility or that the closing would occur on May 2.

[40] If Fulks' testimony that the decision to close Chariot on May 2 was actually made on or about April 18 is to be credited, Schoen could have told, but inexplicably did not tell, Roche that the plant would close on May 2, thereby obviating the need for an election.

Nor did the Respondent advise the NLRB Regional Office that it purportedly had decided on April 26 to close the facility on May 2, after Chariot closed on April 30. On cross-examination, counsel for the General Counsel showed Schoen a copy of the Respondent's initial response to the subject unfair labor practice charge, which was prepared by the Respondent's attorney, Mr. Noonan. (Tr. 1355–1359.) Schoen testified that although he reviewed sections of the response in draft form, he did not review the response in final form. Over the objection of Respondent's counsel, Schoen was then asked:

> Q. In the drafts that he sent you was there information that included the date that you intended the plant to close? That the plant was going to close on May 2nd?
>
> A. I honestly don't recall exactly what I said at the time.

(Tr. 1357.)

Over more objections from Respondent's counsel, counsel for the General Counsel then asked:

> Q. Did you participate in a phone interview with a Board Agent? Regarding the closing of Chariot?
>
> A. Yes, I did.
>
> Q. And Mr. Noonan participate in that telephone conference call?
>
> A. Yes.

(Tr. 1359.)

> Q. During that phone interview did you advise the Board Agent that you had intended to close the plant on May 2nd?
>
> A. I don't know. Without reading it or hearing it, that interview was over a forty-five minute to an hour period and I don't remember it.

Having observed the witness' demeanor during this line of questioning, and having listened to him respond in detail to questions throughout his entire testimony, I find that his responses to these questions were disingenuous, evasive, and intended only to shield the truth. I further find that the evidence supports a reasonable inference that during the investigation immediately following the filing of the initial unfair labor practice, the Respondent did not advise the NLRB Regional Office that a decision had been made to close Chariot on May 2, even though the Respondent had at least two opportunities to do so.

Further, the evidence shows that not only did Fulks and Schoen fail to inform the NLRB Regional Office of their purported decision to close Chariot on May 2, they did not tell anyone else. They did not tell the Chariot's board of directors or seek their approval. They did not tell Chariot's chief financial officer. They did not tell any of the employees. With respect to the employees, Schoen testified that he was concerned about productivity being hurt. (Tr. 1323.)[41] He explained that in the last week or so of April, there had been "problems with intentional act of, things that had to be intentional acts of sabotage." (Tr. 1323.) Although Fran Brock, who also handled customer complaints, testified that she received "a lot more complaints" in April, the evidence discloses that many of these problems were detected in late March–early April (R. Exhs. 26 & 27), rather than at the end of April as testified by Schoen. Further, there is no evidence that any of these mistakes were intentional nor does the evidence disclose who was responsible for them. According to Brock, the final inspection of all trailers was done by Larry Fourez and Tommy Young, and that notwithstanding the mistakes, at least Fourez was hired by Mariah immediately after the Chariot plant closed. And contrary to the impression that Schoen sought to foster, a more plausible explanation for the problems in workmanship is provided by the evidence showing that between February–April 1997, Chariot hired several new and inexperienced workers to replace employees who left, which coincided with the increase in complaints. Thus, when viewed in its totality, the evidence reveals that there was little or no reason for Schoen not to have told the employees that a decision purportedly had been made to close the facility by the end of the week.

What makes the Respondent's story even less credible is the evidence showing that there was no plan for closing down the facility on May 2. When Fulks was asked what was going to happen on May 2 to the equipment, the materials, and the work that was in progress, he responded, "wasn't sure. I was going to try and get with the bank and work out something with the bank, or Chariot would have filed bankruptcy. It would have been one of the two options." (Tr. 843.) The only thing that Fulks knew for sure was that he "knew it would take us several weeks to completely close it down." (Tr. 842.) Beyond that, he could not provide any specifics of how the shutdown was going to proceed.

It is difficult to believe that a businessman, and an attorney, who personally invested well in excess of $150,000 each in a business, and who were personal guarantors on the bank loan for the equipment, would make a decision to close the facility in a few days without having completely and thoroughly considered the ramifications of the decision, without making a few phone calls to banks, suppliers, and customers, and without even advising their own board of directors, chief financial officer, and plant manager.

I therefore find that, as Fulks admitted (Tr. 837), had it not been for the union meeting on April 30, Chariot would not have been closed on that date or on any other date in the approximate time period.[42] While the evidence shows that Chariot had been losing money, that its lease quite possibly would not have been extended beyond June 19, and that it ultimately may have closed, the credible evidence does not show that a decision had been made to close the facility on May 2 or June 19 or on any other date certain in the foreseeable future. At the very least, the evidence shows that while Chariot may have closed sometime in the future, the Respondent accelerated the closing because of union activity and in order to chill the possibility of

[41] If work was as slow on April 26 as Schoen testified that it was, it is difficult to understand exactly how much productivity could be hurt in the few days remaining before the purported closing on May 2.

[42] I am also unpersuaded by the Respondent's assertions that the decision to close Chariot on April 30, instead of May 2, because Schoen felt that his management authority had been undermined by Mayhew's remarks outside the plant.

unionism at Mariah. Accordingly, I find that the Respondent Chariot/Mariah, a single employer, closed its Chariot facility for the purpose of chilling unionism at Mariah in violation of Section 8(a)(3) and (1) of the Act.

4. The refusal to consider/hire the 13 discriminatees

Having found that the Respondent Chariot/Mariah unlawfully closed the Chariot facility in order to chill unionism at Mariah, it is unnecessary for me to decide whether the Respondent unlawfully refused to consider and/or hire the 13 alleged discriminatees on an individual basis because the remedy, if a violation was found, would be commensurate with the reinstatement and backpay remedy set forth below.

CONCLUSIONS OF LAW

1. The Respondent, Chariot Marine Fabricators & Industrial Corp. is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Mariah Boats, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The above-referenced Respondents are a single employer.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. The Respondent, Chariot/Mariah, a single employer, violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Unlawfully creating the impression of surveillance by taking notes of employees engaged in union activities.

(b) Unlawfully telling employees attending a union meeting that the Chariot plant was being closed because they were engaged in union activity.

(c) Promulgating, disseminating, and maintaining an employee handbook that contains a provision that implicitly threatens retaliatory conduct if the employees seek union representation.

(d) Promulgating, disseminating, and maintaining an employee handbook that contains provision that discourages, restrains, and interferes with employees' rights to organize and/or support a union.

6. The Respondent, Chariot/Mariah, a single employer, violated Section 8(a)(3) of the Act by closing Chariot in order to discourage membership in, sympathy for, and activities on behalf of a union at Mariah.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In most circumstances, where an employer has unlawfully closed a plant and, in some instances, transferred its operations, thereby discharging employees for discriminatory reasons, the Board's usual remedy is to require the employer to restore the operation in question and to reinstate all discriminatorily terminated employees, unless the employer can show that restoration of the status quo ante would be unduly burdensome.[43] *See Lear Siegler, Inc.,* 295 NLRB 857, 861 (1989), and cases cited therein.[44] However, where a reopening remedy would likely be unduly burdensome and is unnecessary to effectuate the policies of the Act, the Board has found that the employer's unlawful conduct will be sufficiently remedied by a full make-whole order covering the employees of the closed facility. *See La Conexion Familiar & Sprint Corp.,* 322 NLRB 774, 781 (1996); *Purolator Armored, Inc.,* 268 NLRB 1268, 1269 (1984), enfd. 764 F.2d 1423 (11th Cir. 1985). In the circumstances of this case, I find that an order requiring the Respondent, a single employer, to reopen its Chariot Marine plant would be unduly burdensome and therefore not appropriate. The evidence shows that Chariot had two main components: an unprofitable trailer operation and a profitable stainless steel and aluminum fuel tank operation. When the Respondent closed Chariot on April 30, it discontinued the trailer operation, i.e., the unprofitable part, and continued the stainless steel operation, i.e., the profitable part, in the same manner with the same jobs using the same equipment. Eventually, the stainless steel operation was transferred to the Mariah facility in Benton, Illinois (6 miles away), where the operation continued to exist at the time of hearing. In view of Chariot's financial condition at the time of its closure, requiring the reopening of that facility, 2 years later, while not threatening the economic survival of Mariah, in all likelihood would require Mariah to endure an indefinite period of offsetting Chariot's overall losses with profits from the stainless steel operation or possibly boat sales revenues. See*, La Conexion Familiar & Sprint Corp.,* 322 NLRB at 780–781. In addition, and because Chariot occupied leased premises, it would be required to find and lease new premises, which might prove difficult in a small community like Benton-West Frankfort. Accordingly, I conclude that, instead of requiring the Respondent to reopen the Chariot facility, the Respondent's unfair labor practice will be sufficiently remedied by the full make-whole order below.[45]

Because the Respondent unlawfully closed its Chariot plant in West Frankfort , Illinois, in order to chill unionism at its Mariah facility in Benton, Illinois, thereby terminating all of the Chariot production and maintenance employees and truck drivers on April 30, 1997, it shall offer reinstatement at its existing Mariah facility in Benton, Illinois, to all these employees, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, to their former positions[46] or, if

[43] Neither counsel for the General Counsel or the Charging Parties have requested a reopening remedy in this case. On the other hand, Respondent has not argued that a reopening would be unduly burdensome.

[44] But see also, *NLRB v. Special Mine Services,* 11 F.3d 88 (7th Cir. 1993).

[45] See, *Southeastern Envelope Co.,* 206 NLRB 933, 951–955 (1973); see also, *Cub Branch Mining*, 300 NLRB 57, 62 (1990).

[46] This aspect of the remedy is appropriate in light of the undisputed evidence showing that after closing Chariot on April 30, Mariah con-

such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed; and in the event of the unavailability of jobs sufficient to permit the immediate reinstatement of all such employees, the Respondent shall place those for whom jobs are not now available on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions at the existing Mariah facility in Benton, Illinois. In order to remedy the losses that these employees may have suffered as result of the Respondent's unlawful conduct, I recommend that the Respondent be ordered to make whole all production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, for any loss of earnings and other benefits suffered by them as a result of the Respondent's unlawful conduct from the date of April 30, 1997, to the date the Respondent makes an offer of reinstatement, less any interim earnings, computed in accordance with the Board's usual formula set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in the manner set forth in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[47]

ORDER

The Respondent, Chariot Marine Fabricators & Industrial Corp., West Frankfort, Illinois, and Mariah Boats, Inc., Benton, Illinois, a Single Employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully creating the impression of surveillance by taking notes of employees engaged in union activities.

(b) Unlawfully telling employees attending a union meeting that the Chariot plant was being closed because they are engaged in union activity.

(c) Promulgating, disseminating, and maintaining an employee handbook containing a provision that implicitly threatens retaliatory conduct if the employees seek union representation.

(d) Promulgating, disseminating, and maintaining an employee handbook containing a provision that discourages, retrains, and interferes with employees' rights to organize and/or support a union.

(e) Closing the Chariot facility for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Southern Illinois Laborers District Council, affiliated with Laborers' International Union of North American, AFL–CIO, or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer reinstatement at its existing Mariah facility in Benton, Illinois, to all former Chariot production and maintenance employees and truck drivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed; and in the event of the unavailability of jobs sufficient to permit the immediate reinstatement of all such employees, the Respondent shall place those for whom jobs are not now available on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions at the existing Mariah facility in Benton, Illinois.

(b) Make whole all former Chariot production and maintenance employees and truckdrivers, including, but not limited to, Steven D. Danner, Brent D. Houseworth, Ronald W. Cochran, David Wayne Frost, Phillip L. Calandro, Michael T. Borga, Ronnie D. Rice, Nicholas E. Reynolds, Terry L. Simms, Gary Simms, Brad Rohach, Arthur R. Morris, and Marty E. Williams, for any loss of earnings and other benefits suffered by them as a result of the Respondent's unlawful conduct from the date of April 30, 1997, to the date the Respondent makes an offer of reinstatement, less any interim earnings, computed in accordance with the Board's usual formula set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in the manner set forth in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

(c) Within 14 days from the date of this Order, rescind the policy which appears on page 5, VIII.B of Chariot's Manual of Personnel Policies, Procedures and Operations and maintained since November 2, 1996, discouraging collective representation and implying that the employees will lose wages, terms, and conditions of employment if they seek union representation.

(d) Within 14 days from the date of this Order, rescind the policy which appears on page 45, D.1 of Chariot's Manual of Personnel Policies, Procedures and Operations and maintained since November 2, 1996, prohibiting all conversation, including conversation about unionization, on company property during working hours.

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tinued the stainless steel and aluminum fuel tank operation; immediately hired 20 former Chariot employees, who did not attend the union meeting; assigned them to their former stainless steel positions; or assigned them to other stainless steel positions, even though they had no prior stainless steel experience (e.g., Gregory Ramsey, Jeremy Griffith, Ronnie Riddle, Donald Morgan, David Batts, Larry Fourez, Gary Herron and Robert Hearns); or assigned them to their former non-stainless steel positions (e.g., Justin, Bobby, and Bennie Isaacs as drivers, and Daniel Taylor as maintenance); or in the case of Randy Murphy, assigned him to an entirely different job outside of stainless steel. *See* GC Exhs. 42 and 45. The undisputed evidence also shows that all of these employees were paid a starting wage equal to what they were paid at Chariot, even though in some cases it was higher that the regular Mariah wage (Tr. 950).

[47] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Within 14 days from the date of this Order, rescind the policy which appears on page 5, VIII.B of Mariah's Manual of Personnel Policies, Procedures and Operations and maintained since August 2, 1997, discouraging collective representation and implying that the employees will lose wages, terms, and conditions of employment if they seek union representation.

(f) Within 14 days from the date of this Order, rescind the policy which appears on page 45, D.1 of Mariah's Manual of Personnel Policies, Procedures and Operations and maintained since August 2, 1997, prohibiting all conversation, including conversation about unionization, on company property during working hours.

(g) Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order, and if requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(h) Within 14 days after service by the Region, post at its facility in Benton, Illinois, copies of the attached notice marked "Appendix."[48] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2, 1996.

(i) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"[49] to all productions and maintenance employees and truck drivers who were employed by the Respondent Chariot Marine Fabricators & Industrial Corp. at its West Frankfort, Illinois, facility at any time from the onset of the unfair labor practices on November 2, 1996, found in this case until the completion of these employees' work at that jobsite on April 30, 1997. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[48] If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[49] See fn. 48, above.